

**WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
POUNDING MILL QUARRY CORPORATION**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and the Pounding Mill Quarry Corporation, for the purpose of resolving alleged violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. **ACode@** means the Code of Virginia (1950), as amended.
2. **“Board”** means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
3. **ADepartment@** or **ADEQ@** means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code ' 10.1-1183.
4. **ADirector@** means the Director of the Department of Environmental Quality.
5. **ASWRO@** means the Southwest Regional Office of the Department.
6. **AOrder@** means this document, also known as a consent special order.
7. **“UST”** means underground storage tank.
8. **“Company”** means the Pounding Mill Quarry Corporation.

9. "Facility" means the Pounding Mill Quarry Plant #2.

SECTION C: Findings of Facts and Conclusions of Law

1. The Company owns three USTs located at the facility in Bluefield, Virginia.
2. Staff from the SWRO inspected the facility for compliance with the UST regulations on January 17, 2001 and found, among other things, that a monthly leak detection method was not in place and that monthly records of leak detection were not available for review.
3. A Letter of Agreement ("LOA") was executed by DEQ and the Company on March 16, 2001 which required, among other things, that a leak detection method be implemented for the USTs at the facility by May 6, 2001.
4. On June 21, 2001 the Company sent a letter to the SWRO that provided a contract between the Company and Veeder-Root Service Company to provide the statistical inventory reconciliation ("SIR") method of leak detection for the USTs beginning May 1, 2001.
5. Staff from the SWRO conducted a follow up inspection of the facility on December 20, 2001 and noted that the Company did not implement leak detection for the USTs and did not possess leak detection records for review.
6. State Water Control Board Regulation ("SWCBR") 9 VAC 25-580-130 through -170 requires that owner and operators of UST systems must provide a method or combination of methods, of release detection that can detect a release from any portion of the tank and the connected underground piping that routinely contains product and is installed, calibrated, operated and maintained in accordance with manufacturer's instructions, including routine maintenance and service checks for the operability or running conditions. The leak detection method for tanks must be monitored at least every 30 days for a release.
7. SWCBR 9 VAC 25-580-180 states that the monthly reports of leak detection monitoring must be maintained for at least one year.

SECTION D: Agreement and Order

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.4-44.15 (8a) and (8d), orders the Company, and the Company agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Company, and the Company voluntarily

agrees to pay a civil charge of **\$2,320.00** within **30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check or money order payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

The payment shall include the Company's Federal ID number or Social Security Number if the Company does not have a Federal ID number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically alleged herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order only, the Company admits the jurisdictional allegations in the Order, but does not admit the factual allegations or legal conclusions contained herein.
4. The Company declares it has received fair and due process under the Administrative Process Act, Code ' 9-6.14:1 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of the Company to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order and the Company reserves its defenses to such actions that may be taken by the Board.
5. Failure by the Company to comply with any of the terms of this Order shall constitute a violation

of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. The Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director and the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify by phone the Director and the Director of the SWRO within 24 hours of learning of any condition listed above, which the Parties intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification,

standard, or requirement otherwise applicable.

11. The Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
12. By its signature below, the Company voluntarily agrees to the issuance of this Order.

Date: _____

Robert G. Burnley, Director
Department of Environmental Quality

Pounding Mill Quarry Corporation

Name: _____

Title: _____

State of Virginia

City/County of _____

The foregoing instrument was signed and acknowledged before me this ____ day of _____, 2002 by _____, who is _____ of _____
(name) (title)

Pounding Mill Quarry Corporation on behalf of the Corporation.

Notary Public

My commission expires: _____

APPENDIX A

The Company shall:

1. Install by May 15, 2002, operate and properly maintain an approved method of leak detection for the USTs at the facility.
2. Submit to the SWRO the monthly leak detection reports by the 10th of the following month for each of 12 consecutive months beginning no later than the first full month following the effective date of the Order.
3. Submit by June 15, 2002 an amended 7530-1 registration form that will indicate the correct piping for this UST system.
4. Send all documentation and reports to the following address.

Ruby Scott
Compliance Auditor
VADEQ
P.O. Box 1688
Abingdon, Virginia 24212